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Filed on behalf of The Clorox Company
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

THE CLOROX COMPANY
Petitioner

v.

AUTO-KAPS, LLC
Patent Owner

IPR2016-00821
Patent 7,490,743

PETITIONER'S REQUEST FOR REHEARING
OF THE DECISION NOT TO INSTITUTE *INTER PARTES* REVIEW
UNDER 37 C.F.R. § 42.7

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I. INTRODUCTION

Petitioner respectfully requests reconsideration of limited portions of the Board's Decision in Paper 8 ("Decision") denying *inter partes* review of U.S. Patent 7,490,743 (the "'743 Patent") as requested in the petition filed in IPR2016-00821 (the "Petition").[1]

The '743 Patent is directed to a dispenser assembly for a container. The dispenser assembly has a pump cap with a pump and a tube (passageway) that engages a dip tube in the container. A non-circular "coupling arrangement" on the pump cap that couples to a non-circular "mating arrangement" on the container ensures that the tubes are aligned when the cap is attached to the container.

The '743 Patent describes four embodiments: (1) Container with dual dip tubes, (2) Container within a container, forming an annular space, (3) Oval container mouth and cap, (4) Annular trough in cap that mates with top of container dip tube. Petition at 8-9. The trough-related claims were a non-elected species and never pursued. As noted in the Petition at p. 9:

"A modified embodiment with a projection allows only one rotational orientation:

[1] Prior art and other abbreviations are those used in the Petition and the Decision.

> For example, coupling arrangement **160** may ***include a projection*** (not shown) structured to communicate with a corresponding groove (not shown) of mating arrangement **165** to ensure that ***oval-shaped*** coupling arrangement **160** is coupleable to mating arrangement **165** in ***only one position***.

(*Id.* at 4:57-62 (emphasis added).)"

The Decision overlooks and misapprehends two aspects of the Petition. First, the Decision misapprehended a labeling of "first" and "second" coupling arrangements in Ground 1 as suggesting separate, independent coupling arrangements, when in fact the Petition refers to them as two portions of the one coupling arrangement in the prior art *Guss* reference. Second, the Decision misapprehended and overlooked that Petitioner argued that the ***cap*** of the prior art *Bartimes* reference corresponds to the claimed "coupling arrangement," not the threaded nut included in that cap.

Petitioner respectfully requests rehearing on these points, which are elaborated below.

II. RELIEF REQUESTED

Petitioner requests a rehearing of the Decision and institution of an *inter partes* review ("IPR") based on anticipation by *Guss* and *Bartimes* for claim 1, and obviousness for dependent claims, as set forth in the following grounds:

- Ground 1 of the Petition (Claim 1 is unpatentable as anticipated by *Guss*);
- Ground 2 (Claim 1 is unpatentable as anticipated by *Bartimes*);
- Grounds 5-14 and 16 (Claims 2-10 are unpatentable over *Guss* or *Bartimes* in view of other references showing dependent claim features as set forth in the Petition).

III. STANDARD OF REVIEW

Under 37 C.F.R. § 42.71(c), "[w]hen rehearing a decision on petition, a panel will review the decision for an abuse of discretion." An abuse of discretion occurs when a "decision was based on an erroneous conclusion of law or clearly erroneous factual findings, or … a clear error of judgment." *PPG Indus. Inc. v Celanese Polymer Specialties Co. Inc.*, 840 F.2d 1565, 1567 (Fed. Cir. 1988) (citations omitted). The request must "specifically identify all matters the party believes the Board misapprehended or overlooked and the place where each matter was previously addressed in a motion, an opposition, or a reply." 37 C.F.R.

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